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IN THE UNITED STATES DISTRICT COURT
6
FOR THE DISTRICT OF ARIZONA
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9 Matthew Phillip Solan,

No. CV-24-2061-PHX-JJT (DMF)

10 Plaintiff,

11 v.

ORDER

12 State of Arizona, et al.,

13 Defendants.

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15 This matter is before the Court on Defendants State of Arizona, Sheldon, Bowen,
16 Carter, and Coleman (“Defendants”) Motion to Dismiss Counts One, Four, Eleven, and
17 Twelve of Plaintiff’s First Amended Complaint (Doc. 13) pursuant to Rule 12(b)(6) of the
18 Federal Rules of Civil Procedure. Defendants mailed a copy of the motion to dismiss to
19 Plaintiff (Doc. 13 at 18).

20 Rule 12.1(c) Rules of Practice of the U.S. District Court for the District of Arizona
21 (“LRCiv” or “Local Rules” or “Local Rules of Civil Procedure”) states:

22 **(c) Motions to Dismiss for Failure to State a Claim or for Judgment on**
23 **the Pleadings.** No motion to dismiss for failure to state a claim or
24 counterclaim, pursuant to Federal Rule of Civil Procedure 12(b)(6), or
25 motion for judgment on the pleadings on a claim or counterclaim, pursuant
26 to Federal Rule of Civil Procedure 12(c), will be considered or decided unless
27 the moving party includes a certification that, before filing the motion, the
28 movant notified the opposing party of the issues asserted in the motion and
the parties were unable to agree that the pleading was curable in any part by
a permissible amendment offered by the pleading party. The movant may

1 comply with this rule through personal, telephonic, or written notice of the
2 issues that it intends to assert in a motion. A motion that does not contain
3 the required certification may be stricken summarily.

4 Despite the mandatory requirement of conferral, Defendants' counsel "considered"
5 complying but decided not to do so, claiming futility of such conferral despite that there is
6 no futility exception in the rule (Doc. 13-1 at 2-3):

7 Pursuant to LRCiv 12.1(c), counsel for Defendants State of Arizona, Michael
8 R. Sheldon, Aaron Bowen, Lea'Cher Carter, and Unique Coleman hereby
9 certifies that she considered attempting to confer with Plaintiff about the
10 deficiencies that she perceives with the claims from the First Amended
11 Complaint (doc. 6) that survived the Court's screening Order (doc. 8).
12 However, given that Plaintiff already has filed a Second Amended Complaint
13 (doc. 10), she has concluded that such efforts would be futile.

14 (*Id.*).

15 After the Court had twice screened lengthy complaints by Plaintiff in this matter
16 and before Defendants appeared, Plaintiff filed a motion for leave to file a second amended
17 complaint which attached a proposed second amended complaint with markups in
18 compliance with LRCiv 15.1 (Doc. 9); Plaintiff also lodged an accompanying proposed
19 second amended complaint which did not contain the LRCiv 15.1 markups (Doc. 10). In
20 the motion to amend, Plaintiff states his intent is an attempt to cure deficiencies identified
21 by the Court in the Court's most recent screening order (Doc. 9 at 1). This reason
22 demonstrates to the Court that LRCiv 12.1(c)'s conferral requirement should not be
23 excused for anticipated futility even if futility were a valid excuse for non-compliance with
24 the rule. Per LRCiv 12.1(c), the Court will summarily strike the Defendants' Motion to
25 Dismiss Counts One, Four, Eleven, and Twelve of Plaintiff's First Amended Complaint
26 (Doc. 13).

27 This matter is also before the Court on Plaintiff's motion for leave to file a second
28 amended complaint and the accompanying proposed second amended complaint (Docs. 9,
10). Plaintiff's motion states that he has not conferred with Defendants because they had
not been served at the time of the filing of his motion (Doc. 9 at 1). The Court recognizes

1 that Plaintiff may choose to file a different proposed Second Amended Complaint after
2 conferral with Defendants' counsel as Plaintiff's current proposed Second Amended
3 Complaint did not contain amendments (other than renumbering) pertinent to the counts to
4 which the Court ordered Defendants to respond and which Defendants believe are deficient
5 (Docs. 9, 10). Further, it would be beneficial for case management purposes for Plaintiff
6 and Defendants' counsel to discuss other amendments to the operative complaint claims
7 before Plaintiff decides whether to pursue a second amended complaint and the contents
8 of a proposed second amended complaint.

9 Accordingly, and for the orderly and efficient management of this matter,

10 **IT IS HEREBY ORDERED** summarily striking Defendants' Motion to Dismiss
11 Counts One, Four, Eleven, and Twelve of Plaintiff's First Amended Complaint (Doc. 13)
12 for non-compliance with LRCiv 12.1(c).

13 **IT IS FURTHER ORDERED** that Plaintiff and Defendants shall **promptly**
14 telephonically confer about the deficiencies identified in Defendants' stricken motion to
15 dismiss as well as about amendments Plaintiff may seek regarding any claims against
16 Defendants in this matter.

17 **IT IS FURTHER ORDERED** that Defendants shall respond to the operative
18 claims in Plaintiff's First Amended Complaint **within twenty-one (21) days** of the filing
19 date of this Order.

20 **IT IS FURTHER ORDERED** that **denying without prejudice** Plaintiff's motion
21 for leave to file a second amended complaint and the accompanying proposed second
22 amended complaint (Docs. 9, 10).

23 Dated this 27th day of February, 2025.

24 _____
25 *Deborah M. Fine*
26 Honorable Deborah M. Fine
27 United States Magistrate Judge
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